



Virginia
Regulatory
Town Hall

Periodic Review and Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Department of Mental Health, Mental Retardation and Substance Abuse Services
VAC Chapter Number:	12 VAC 35-40-10 et seq.
Regulation Title:	Mandatory Certification/Licensure Standards for Treatment Programs for Residential Facilities for Children
Action Title:	Amend the regulations
Date:	September 27, 2001

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

These regulations are an addendum to 12 VAC 42-10-10 et seq., Standards for Interdepartmental Regulation of Children's Residential Facilities (The Standards) which are generic standards governing a wide variety of residential facilities licensed by the Departments of Mental Health, Mental Retardation and Substance Abuse Services (the Department), Social Services, Education and Juvenile Justice. The standards in this addendum or "Mental Health Module" as it is operationally called, apply to all providers licensed by the Department to provide residential treatment programs for children who are mentally ill, mentally retarded or chemically dependent.

The intent of this Module is to provide more specific standards governing the provision of mental health, mental retardation and substance abuse services in children's residential facilities licensed by the Department. The Module regulates practices and requirements that are unique to the facilities licensed by the Department, such as the use of seclusion and restraint and compliance with human rights regulations. The Module requires the provision of more intensive services by specifying requirements for behavior management therapy, medication administration, formal arrangements for the provision of treatment, client rights, and crisis intervention services. This module is designed to help protect the health, safety and welfare of children receiving mental health, mental retardation, or substance abuse services by ensuring those with significant needs in those areas receive an increased level of services and protections. Facilities must meet additional requirements of this Module to be certified to receive Medicaid residential treatment funding.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

The Module is a mandatory regulation. It is part of the Mandatory Certification /Licensure Standards for Treatment Programs for Residential Facilities for Children. The Office of the Attorney General (OAG) confirmed that "...the State Mental Health, Mental Retardation and Substance Abuse Services Board has the authority to promulgate the regulations in accordance with §§ 37.1-10, 37.1-179.1 and 37.1-182 of the Code of Virginia and is required to do so." The OAG has also noted that "the regulations are constitutional and generally do not conflict with current federal or state laws or regulations."

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

The Department contacted all children's residential provider organizations that are licensed under the Module to request comments for this periodic review. Comments were also requested from major consumer advocacy groups and the Office of Interdepartmental Regulation. The Department received one comment on these regulations which is summarized below:

1. Minnie's Youth Palace, Inc. - This provider indicated that the regulation is effective and meets its goals.

Agency response: While the respondent believes that the existing regulations are satisfactory, the Department has found that these regulations are in need of certain revisions. Several of the sections (e.g. Confidentiality, Seclusion and Restraint and Medication Management) are duplicative of the current Standards For Interdepartmental Regulation of Children's Residential Facilities. These Standards were completely revised effective July 1, 2000, and now incorporate some of the same requirements included in the existing Mental Health Module, as well as the regulations for human rights, which are currently being promulgated by the Board. The existing Module was promulgated in 1992, and the Department also believes that some of the requirements that are included in the Module may be outdated and do not reflect current treatment practices in residential treatment facilities for children.

In view of these considerations, the Department is planning to convene an advisory group to assist with the development of a proposal to address the Module's treatment requirements. This advisory group would involve the Department of Medical Assistance Services, the Comprehensive Services Act Office, and the Department of Social Services, all of which fund or place children in these facilities. It would also include Department staff with background in children's mental health and mental retardation services.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

This regulation has two identifiable goals:

1. To clearly articulate standards of health, safety and treatment and to ensure that specific protections are provided for the welfare of children receiving mental health, mental retardation and substance abuse services from providers of residential services for children.
2. To clearly articulate the procedures and actions necessary to implement regulatory requirements with the least possible cost and intrusiveness to consumers, families, and provider organizations.

As previously noted, the one respondent commented that the current regulations meet these goals. The Department generally agrees with this assessment, and believes that the Module is generally understandable and clearly written. The Module provides basic and essential protections to citizens, specifically children receiving services in residential treatment facilities. The Department believes, however, that the Module should be updated to eliminate sections (e.g. Seclusion and Restraint, Confidentiality) that duplicate other regulations. Elimination of these duplicative sections will not absolve providers from the responsibility for compliance with these requirements. Consideration should also be given to revising provisions, as needed, to assure that the Module reflects current treatment practices.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

The Department and the State Board have conducted an analysis of the applicable law and public comment and have considered several alternatives for resolving the issues identified by this periodic review.

1. Alternative 1 - No regulations. This alternative was rejected. The OAG has advised the Department that these regulations are mandated by the Code of Virginia. Additionally, repealing the Module without replacing it would eliminate an important tool for protecting the health and safety of children receiving residential treatment services.
2. Alternative 2 - No change to the regulations. This alternative was also rejected. The Module has not been revised since its promulgation in 1992 and revisions are necessary to eliminate duplication and to assure that provisions reflect current treatment practices.
3. Alternative 3 - Repeal the existing regulations and promulgate revised replacement regulations. This alternative was rejected, as the Department believes that the desired outcome can be achieved by amending the existing module. This amendment will include updates to current treatment practices and eliminate the provisions which duplicate other regulations.
4. Alternative 4 - Amend the existing regulations. This alternative is recommended. The Department believes that amending the existing Module is a more expedient and less burdensome method for eliminating duplication and assuring that the Module reflects current treatment practices.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The Department and the State Board recommend Alternative 4, which will involve amending the current regulations. The Department and the State Board propose to develop an amended Module that will eliminate duplication and assure the provision of current treatment practices in children's residential treatment programs. It is anticipated that the amendment will improve the focus on consumer protections and provider accountability, retain flexibility, and enable the Department to meet its statutory requirements in a manner that is most protective of children's health, safety and welfare and least burdensome to provider organizations.

Substance

Please detail any changes that would be implemented.

Duplicative regulations would be identified and stricken from the Module (i.e. certain provisions for seclusion and restraint and confidentiality). In addition, steps would be taken to ensure that the content of the revised Module reflect current treatment practices in children's residential treatment programs.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

This proposed amended Module should improve assurances that children in residential treatment programs will receive comprehensive and quality mental health, mental retardation and substance abuse treatment services. This Module respects the authority and rights of parents educating, nurturing and supervising their children and affirms the marital commitment. It also supports individuals in their efforts to achieve economic self-sufficiency and to accept personal responsibility by its continued focus on consumer choice and involvement in treatment decisions. This Module has no discernable negative impact on family income. Its consumer choice focus encourages and promotes healthy economic competition among provider organizations.